

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
GREENVILLE DIVISION

MAJOR PROFIT, Petitioner

V.

NO. 4:94CV91-D-O

STATE OF MISSISSIPPI,  
ET AL, Respondents

O P I N I O N

Petitioner, Major Profit, Jr., an inmate at the Mississippi State Penitentiary, files this petition for writ of habeas corpus pursuant to 28 U.S.C. §2254.<sup>1</sup> He lists four grounds for relief; 1)failure to receive proper sentence; 2)prior to the plea agreement hearing he was informed that the sentences would run concurrently; 3)the "sentencing Judge, Circuit Clerk, and D.A. refuse to reply to letter clarifying sentence;" and 4)"Petitioner asserts that sentencing transcript will clear all arguments pertaining to this case." For relief, he asks that he be provided

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<sup>1</sup> By an earlier order of this court, petitioner was granted leave to proceed in forma pauperis and was ordered to file an amended petition using Local Form P-1 clearly stating the facts upon which he bases each of his claims. Petitioner then submitted two identical petitions on Local Form P-1, which were filed on July 11, 1994, and July 25, 1994. Since they arrived on different dates, the office of the clerk inadvertently filed each petition as a separate cause (4:94CV91-D-O and 4:94CV174-B-O).

Action Number 4:94CV174-B-O has subsequently been dismissed.

a copy of the sentencing transcript and that his sentences be ordered to run concurrently.

On April 3, 1992, petitioner pled guilty to unspecified criminal offenses in the Circuit Court of Washington County, Mississippi. He states that his attorney had told him that in exchange for his guilty plea he would receive two five-year sentences running concurrently. After the court accepted his plea, he "was sentenced to 5 years . . . [the judge] added another five years after a brief confrontation with parole officer Gary Odum. But didn't say consecutive or concurrent." He contends that he thought the sentences were running concurrently, as he says he had agreed to before entering his plea, but later found that they were running consecutively.

Petitioner's answers to questions 12 and 13 on Local Form P-1, regarding any post-conviction action he may have filed, are confusing and contradicting. However, his prior pleadings contain an Order of Dismissal, dated February 22, 1994, from the Circuit Court of Washington County, Mississippi, denying a Petition for Post Conviction Relief<sup>2</sup> on the grounds alleged in this petition. He then had 30 days to file notice of appeal with the State Supreme Court. Rule 4(a) Miss. Supreme Court rules. A phone call to the Office of the Clerk of the Mississippi Supreme Court on September

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<sup>2</sup> Filed in accordance with Miss. Code Ann. §§99-39-1 et. seq.

22, 1994, indicated that he had not done so. Therefore, he has exhausted his state remedies.

After carefully considering the contents of the pro se complaint and giving it the liberal construction required by Haines v. Kerner, 404 U.S. 519 (1972), this court has come to the following conclusion.

A guilty plea must be an informed and intelligent decision of the defendant. Boykin v. Alabama, 395 U.S. 238, 242 (1969). An accused must be advised of the direct consequences of the plea, i.e., those results having a "definite, immediate and largely automatic effect on the range of defendant's punishment." Cuthrell v. Director, Patuxent Institution, 475 F.2d 1364 (4th Cir. 1973), cert. denied, 414 U.S. 1005 (1973). Since petitioner alleges that, as part of the plea-bargaining process, he was informed that he would only have to serve five years and he was then sentenced to ten, he possibly was not informed of the consequences of his plea of guilty. This would have clearly had an "effect on the range of [his] punishment." Id.

Ground 3<sup>3</sup> does not state an arguable or legal basis for a claim of constitutional dimension. The officials mentioned therein are under no requirement, constitutional or otherwise, to

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<sup>3</sup> "Sentencing Judge, Circuit Clerk, and D.A. refuse to reply to letter clarifying sentence."

reply to petitioner's letters. Ground 4<sup>4</sup> does not state a cause for relief at all; instead, it provides a remedy for Grounds 1 and 2. Therefore, it is the opinion of the court that Grounds 3 and 4 should be dismissed without hearing for failure to state a claim upon which relief may be granted. This case will proceed on the remaining two grounds.

Accordingly, an order of partial dismissal in accordance with this opinion will be entered.

This the \_\_\_\_\_ day of \_\_\_\_\_, 1994.

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UNITED STATES DISTRICT JUDGE

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<sup>4</sup> "Petitioner asserts that sentencing transcript will clear all arguments pertaining to this case."